

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2963 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
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AAHIR VIJANAND JADAVBHAI

Versus

STATE OF GUJARAT

Appearance:

MR J.P. TRIVEDI, Advocate for MR JAYANT PATEL for Petitioner
MR PREMAL JOSHI, AGP for the State.

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 08/12/2000

ORAL JUDGEMENT

The petitioner challenges the orders at Annexures "B", "C" and "D" to the petition, by which the order dated 27.1.1989 passed by the Mamlatdar, Veraval regularising the encroachment of the land in question admeasuring 38 gunthas, was set aside.

2. The encroached land admeasuring 38 gunthas was ordered to be regularised by the Mamlatdar, keeping in view the guidelines prescribed by the State Government in its resolution dated 8.1.1980. The appellate authority however, set aside that order. The matter was ultimately carried to the revisional authority i.e. the State Government. The State Government by its order dated 8.1.1992 at Annexure "A" to the petition refused to entertain the revision application of the petitioner on the ground that the Mamlatdar was not authorised to regularise such encroachment and that his order was a nullity.

3. On perusal of the Government resolution dated 8.1.1980, which lays down the guidelines for regularising enroachment, it is clear that as provided in paragraph 6 of the resolution, Mamlatdars are empowered to regularise encroachment in respect of land upto one acre. Therefore, the assumption of the revisional authority that the Mamlatdars have no power to regularise encroachment is not borne out from the resolution, which in fact shows that to a limited extent the Mamlatdars have been authorised to regularise. The revisional authority has rejected the revision application at the threshold by observing that it was not worth admitting. In view of the contents of the resolution dated 8.1.1980, it would be appropriate for the revisional authority to consider the revision application of the petitioner on merits and take a decision in accordance with law after hearing the concerned parties. The impugned order at Annexure "A" dated 8.1.1992 of the revisional authority is hereby set aside and the matter is remanded to the revisional authority for considering it on merits and for taking a decision in accordance with law. Till such decision is rendered, the possession of the land in question which is the subject matter of the ad-interim relief granted in terms of para 9(B) shall not be disturbed. Rule is made absolute accordingly with no order as to costs.

* /Mohandas